13322 TRANS

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

[Request for Reconsideration]

FILE: B-196118.2, B-196118.3 DATE: April 2, 1980

MATTER OF: Crown Laundry and Cleaners; Tri-States Service Company -- Reconsideration

DIGEST:

Where parties requesting reconsideration have not specified any error in law or provided information not considered in original decision, decision is affirmed.

Crown Laundry and Cleaners (Crown) and Tri-States Service Company (Tri-States) request reconsideration of our decision in the matter of Crown Laundry and Cleaners, B-196118, January 30, 1980, 80-1 CPD 82, in which we recommend that a solicitation for a fixed price requirements type contract to operate Government-owned laundry facilities for laundry services currently being performed by Government personnel at Fort Ord, California, be cancelled and readvertised under applicable Defense Acquisition Regulation (DAR) provisions cited in that decision. It was our view that the solicitation was defective because it failed to adequately express the Army's intent to consider option prices in the bid price evaluation.

The solicitation requested prices for an initial 1-year contract period and included an option for two additional 1-year periods. Although the solicitation did not request separate option prices, Crown effectively increased those prices by successively lowering the prompt payment discounts it offered for the second and third performance years. The solicitation did not provide for the evaluation of option prices.

The solicitation also contained a provision advising bidders of the evaluation method the Government intended to use for cost comparison in evaluation of Government and contracting costs. Under that provision, award was to be made only if the contracting costs for three years were found to be lower than the Government's in-house operating costs.

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Crown was the low bidder under the bid evaluation provisions of the solicitation, i.e., it was low only for the base year. On the other hand, Tri-States was low under the cost comparison provision because its evaluated 3-year cost was less than Crown's. The agency proposed to make award to Tri-States as the low bidder for the performance period contemplated by the agency. We concluded that award should not be made under the solicitation because the bid evaluation provision did "not adequately express the Government's intent or reflect the reported actual needs of the Government."

Our bid protest procedures require that a request for reconsideration must specify any errors of law made or information not previously considered. 4 C.F.R. 20.9(a) (1979). We do not believe either of the parties has sustained this burden.

For example, in support of its request for reconsideration, Crown argues that it was the Army's intent to solicit the services for only 1 year, that its position is supported by the language of the cost comparison evaluation section contained in the solicitation, and also by the fact that a similar Army contract for these laundry services at Fort Rucker has been solicited on a year to year basis since 1976. Crown therefore believes it was entitled to award of the contract because it offered the services solicited at the most favorable cost to the Government for the 1 year.

Except for the alleged Fort Rucker contract, all of the questions raised by Crown have been previously considered in our original decision. Moreover, the allegations respecting the Fort Rucker contract do not persuade us that the Army's reported intent "to run the contract for three years" with respect to the solicitation in issue is not correct. Indeed logic would dictate otherwise. For example, it was Crown's original position that only its base year prices

should be extended for cost comparison as well as bid evaluation purposes, without consideration of the actual prices bid for the two option years. We believe it would make little sense to dismantle an in-house capability based on an erroneous 3-year cost evaluation without the cost protection the Government could only realize by the evaluation of the actual option prices offered. Our decision thus concluded that "award to Crown, the low bidder under the bid evaluation provisions of this solicitation would be improper as award to that firm would not in actuality be made 'on the basis of the most favorable cost to the Government' for the 3-year period intended for the performance of this contract." We therefore do not believe Crown has presented any valid basis for us to modify our original decision.

Similarly Tri-States' request in our view amounts to no more than a disagreement with our original conclusions, without demonstrating any errors in law or facts not previously considered. For example, Tri-States raises the question of the responsiveness of Crown's bid. In this respect, our decision indicated that the manner in which Crown chose to bid was not prohibited by the terms of the solicitation, i.e., there was no solicitation provision requiring level pricing for the base year and the succeeding option years. We believe that implicit in that finding was the conclusion that the Crown bid was responsive. While Tri-States disagrees with our conclusion, it has not shown that our position was legally incorrect.

Tri-States also admits that it was not the agency's initial intent to provide for the evaluation of option prices for bid evaluation purposes yet after bids were opened the agency "felt compelled to have its intent broadened to provide for the evaluation of option prices for bid evaluation purposes," as a result of the manner in which Crown chose to bid. While our decision was not cast in the same manner, we did consider precisely the same issues now raised by Tri-States,

i.e., the agency's "intent" as expressed in its bid evaluation provision, the agency's actual reported needs, and the defective manner in which they were expressed. We therefore recommended that the solicitation be canceled and the requirements readvertised because "the provisions for bid evaluation do not adequately express the Government's intent or reflect [its] reported actual needs." A contracting agency may not evaluate bids in a manner which is inconsistent with the evaluation factors set forth in the solicitation to overcome a method of bidding which was unforseen at the time the solicitation was prepared. To permit otherwise would be contrary to the legal requirement that these evaluation factors be made known in advance of bid opening so that all bidders can compete on an equal basis. See 36 Comp. Gen. 380 (1956).

We also note the concern of both Crown and Tri-States that by recommending resolicitation the readvertisement will take on an "auction" atmosphere because the competitors' prices and the Government's in-house estimate have been revealed and will tend to influence the prices on rebidding. We recognize that in some instances the competitive bidding system may be compromised to some extent by the cancellation of a solicitation after bid opening and subsequent readvertisement. Engineering Research, Inc., B-187814, February 14, 1977, 77-1 CPD 106. However, we believe that under the circumstances the need to correct the defects in a solicitation prior to an award clearly outweigh the danger of such a compromise.

Since neither party on reconsideration has presented any evidence demonstrating any error of fact or law in the original decision nor provided any substantive information not previously considered, our decision is affirmed.

Milton J. Socolar

For the Comptroller General
of the United States